

12/27/11 11:39:45
DK P BK 148 PG 693
DESOTO COUNTY, MS
W.E. DAVIS, CH CLERK

Prepared by, Recording requested by and
When recorded return to:

WELLS FARGO BANK, NATIONAL ASSOCIATION
1808 Aston Avenue, Suite 250
Carlsbad, California 92008
Phone: (760) 918-2700

Attention: Loan Admin.
Loan No.: 0264736835
Unit No.: 269

Return To: First American Title Insurance Company
2001 Airport Road, Suite 301
Flowood, MS 39232
Attn: Melissa Holyfield
(601) 366-1222

INDEXING INSTRUCTIONS: Lot 5, Southlake Commercial Subdivision located in Sec. 36,
Township 1 South, Range 8 W, DeSoto County, MS, PB 55, Page 44

Marginal Notation: Book 147, Page 488

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Lease:	Master Lease Agreement dated as of October 17, 2011
Landlord:	FCHUX LLC, a Delaware limited liability company c/o Fortress Investment Group Credit Funds 10250 Constellation Blvd, Suite 2350 Los Angeles, CA 90067 Phone: (972) 532-4341
Tenant:	O'CHARLEY'S INC., an Tennessee corporation 3038 Sidco Drive Nashville, Tennessee 37204 Attn: Legal Phone: (615) 256-8500

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (Mississippi)
Wells Fargo/ Fortress/ O'Charley's, Inc.
Loan No. 0264736835/ Unit No. 269

Guarantor:	None
Property:	As described on Exhibit A
Property Address:	357 West Goodman Road, Southaven, DeSoto County, MS 38671

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (hereinafter referred to as "Agreement") made as of December 16, 2011, among WELLS FARGO BANK, NATIONAL ASSOCIATION (together with its successors and assigns hereinafter referred to as "Secured Party"), Tenant, and Landlord.

RECITALS:

- A. Landlord and Tenant have entered into the Lease relating to the Property described therein and on the attached Exhibit A; and
- B. Secured Party has committed to make a loan to Landlord (hereinafter referred to as the "Loan") to be secured by certain mortgages, deeds of trust or deeds to secure debt (collectively, the "Mortgage") and certain assignments of leases and rents (collectively, the "Assignment of Leases") from Landlord to Secured Party covering the Property; and
- C. Tenant agrees that the Lease shall be subject and subordinate to the Mortgage held by Secured Party, provided Tenant is assured of continued occupancy of the Property under the terms of the Lease and the continued effectiveness of Tenant's rights under the Lease, all as hereinafter provided.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, the sum of Ten Dollars (\$10.00) and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Secured Party, Tenant and Landlord hereby agree to the subordination, attornment and other agreements set forth herein.

1. Subordination and Consent. Secured Party, Tenant and Landlord do hereby covenant and agree that the Lease with all rights, options, liens and charges created thereby (including, without limitation, any options, rights of first refusal, or rights contained in the Lease, or otherwise existing, to acquire any or all of the Property, or any superior leasehold interest therein), is and shall continue to be subject and subordinate in all respects to the Mortgage and to any renewals, modifications, consolidations, replacements and extensions thereof and to all advancements made thereunder. Tenant acknowledges that Landlord will execute and deliver to Secured Party an assignment of the Lease as security for said loan, and Tenant hereby expressly consents to such assignment. Tenant agrees that if there is a default by Landlord in the performance and observance of any of the terms of such Loan, Secured Party may, at its option, demand all rents due under the Lease be paid by Tenant directly to Secured Party at the address specified below, or as otherwise specified by Secured Party. Tenant agrees that upon Secured Party's written request for payment of rent directly to Secured Party, Tenant will timely remit any and all payments due under the Lease directly to, and payable to the order of, Secured Party. Such payments to Secured Party will constitute performance of Tenant's payment obligations under the Lease. Tenant shall be entitled to rely upon any such notice from Secured Party and shall not be

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (Mississippi)
Wells Fargo/ Fortress/ O'Charley's, Inc.
Loan No. 0264736835/ Unit No. 269

obligated to inquire or investigate whether a default by Landlord has occurred. Tenant agrees that it has no right or option of any nature to purchase the Property, or any portion thereof or any interest therein.

2. Non-Disturbance. Notwithstanding the provisions of Section 1 above, Secured Party, on its own behalf and on behalf of its successors and assigns, including any person or entity acquiring legal title to the Property by foreclosure (whether judicial or non-judicial) of the Mortgage, deed-in-lieu of foreclosure or other sale in connection with the enforcement of the Mortgage (any such party is referred to herein as a "Successor Owner"), does hereby agree with Tenant that (a) neither the existence of the Mortgage nor any foreclosure (whether judicial or non-judicial), deed-in-lieu of foreclosure, other sale of the Property or other exercise of other rights or remedies in connection with enforcement of the Mortgage shall operate to (i) terminate the Lease or Tenant's rights thereunder to possess and use the Property in accordance with the terms of the Lease, or (ii) alter or adversely affect Tenant's rights and obligations under the Lease (including without limitation, Tenant's rights to use insurance and condemnation proceeds to repair and rebuild the Property as contemplated by the Lease), all of which shall be honored by Secured Party or any Successor Owner, so long as no Event of Default (as defined in the Lease) shall have occurred and be continuing, and (b) in the event any Successor Owner becomes the fee simple owner of the Property by foreclosure, conveyance in lieu of foreclosure or otherwise, so long as no Event of Default (as defined in the Lease) has occurred and is continuing, then (i) the Lease shall continue in full force and effect as a direct Lease between the Successor Owner and Tenant, upon and subject to all of the terms, covenants and conditions of the Lease, for the balance of the term of the Lease, and Successor Owner will not disturb the possession of Tenant, and (iii) the Property shall be subject to the Lease and Successor Owner shall recognize Tenant as the tenant of the Property for the remainder of the term of the Lease in accordance with the provisions thereof and be bound thereby as landlord thereunder until the succeeding owner takes title to the Property; provided, however, that Successor Owner shall not be:

a. subject to any claims, offsets or defenses which Tenant might have against any prior landlord (including Landlord); or

b. obligated to complete any construction work required to be done by any prior landlord (including Landlord) pursuant to the provisions of the Lease or to reimburse Tenant for any construction work done by Tenant (except for disbursement of insurance proceeds and/or condemnation awards in accordance with the Lease to the extent such proceeds are received by such Successor Owner); or

c. required to make any repairs to the Property required as a result of fire or other casualty or by reason of condemnation unless Secured Party shall be obligated under the Lease to make such repairs and then shall be obligated to finance the completion of such repairs only to the extent of casualty insurance proceeds or condemnation awards received; or

d. required to make any capital improvements to the Property which Landlord may have agreed to make, but had not completed, or to perform or provide any services with respect to the Property; or

e. be liable for any act or omission of any prior landlord (including Landlord); or

f. bound by any rent or additional rent which Tenant might have paid for more than thirty (30) days in advance (except to the extent received by such Successor Owner) or any security deposit or other prepaid charge (except to the extent received by such Successor Owner) paid to any prior landlord (including Landlord); or

g. bound by any amendment or modification of the Lease that results in a reduction of Base Monthly Rental, Base Annual Rental or Additional Rent (each as defined in the Lease), or a shortening of the Lease Term (as defined in the Lease) or a material increase in Landlord's obligations made without Secured Party's written consent which shall not be unreasonably withheld, conditioned or delayed.

h. Secured Party shall not join Tenant in any action, suit or proceeding arising out of the Mortgage or seeking to foreclose the Mortgage, unless Tenant is deemed to be a necessary party under applicable Law in order for Secured Party to avail itself of and complete the foreclosure or other remedy.

3. Attornment. Tenant does hereby agree with Secured Party that, in the event that a Successor Owner becomes the owner of the Property by foreclosure, conveyance in lieu of foreclosure or otherwise, then Tenant shall attorn to and recognize such Successor Owner as the landlord under the Lease for the remainder of the term thereof, and Tenant shall perform and observe its obligations thereunder, subject only to the terms and conditions of the Lease. Upon request by either Tenant or the Successor Owner, each of Tenant and the Successor Owner shall execute and deliver an appropriate agreement of attornment.

4. Lease Defaults. In the event Landlord shall fail to perform or observe any of the terms, conditions or agreements in the Lease, Tenant shall give written notice thereof to Secured Party and Secured Party shall have the right (but not the obligation) to cure such default. Tenant shall not take any action with respect to such default under the Lease in order to terminate, rescind or avoid the Lease or to withhold any rent or other monetary obligations thereunder, provided that such default does not place Tenant's business operations or the health, safety and welfare of Tenant's employees, customers and invitees in immediate jeopardy, for a period of thirty (30) days following receipt of such written notice by Secured Party; provided, however, that if such default reasonably requires more than thirty (30) days to cure, Secured Party shall have a reasonable time, but in no event more than ninety (90) days, to cure the default provided Secured Party commences to cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion. Tenant will accept performance by Secured Party of any term of the Lease required to be performed by Landlord with the same force and effect as though performed by Landlord, although Secured Party shall in no event be required to do so.

5. Obligations and Liability of Secured Party. Secured Party shall have no obligations nor incur any liability with respect to any warranties of any nature whatsoever, whether pursuant to the Lease or otherwise, including, without limitation, any warranties respecting use, compliance with zoning, hazardous wastes or environmental laws, Landlord's title, Landlord's authority, habitability, fitness for

purpose or possession. Furthermore, in the event that Secured Party shall acquire Landlord's interest in the Property, Secured Party shall have no obligation with respect to the obligations imposed on the landlord under the Lease prior to the date Secured Party acquires Landlord's interest in the Property, nor incur any liability, beyond Secured Party's interest in the Property (or the proceeds of sale of all or any portion thereof or any insurance or condemnation proceeds received by Secured Party in connection therewith), and Tenant shall look exclusively to such interest of Secured Party in the Property (or in such proceeds or funds) for the payment and discharge of any obligations or liability imposed upon Secured Party hereunder, under the Lease, and Secured Party is otherwise hereby released and relieved of any personal liability hereunder or under the Lease. Secured Party shall not, either by virtue of the Mortgage, the Assignment of Leases or this Agreement, be or become a mortgagee in possession or be or become subject to any liability or obligation under the Lease or otherwise until Secured Party shall have acquired the Landlord's interest in the Property, by foreclosure or otherwise, and then such liability or obligation of Secured Party under the Lease shall extend only to those liabilities or obligations accruing subsequent to the date that Secured Party has acquired Landlord's interest in the Property. Without limiting the generality of the foregoing, neither the Mortgage, the Assignment of Leases nor this Agreement shall, prior to Secured Party's acquisition of Landlord's interest in the Property, by foreclosure or otherwise, operate to place responsibility for the control, care, management or repair of the Property upon Secured Party or impose upon Secured Party responsibility for the carrying out of any of the terms or conditions of the Lease, and Secured Party shall not be responsible or liable for any waste committed on the Property by any party whatsoever, for any dangerous or defective condition of the Property or for any negligence in the management, upkeep, repair or control of the Property.

6. No Modification. Tenant will not consent to any termination or cancellation of the Lease or to any modification or amendment that results in a reduction of Base Monthly Rental, Base Annual Rental or Additional Rent (each as defined in the Lease), or a shortening of the Lease Term (as defined in the Lease) or a material increase in Landlord's obligations, without Secured Party's prior written consent and will not make any payment to Landlord in consideration of any such modification, termination or cancellation of the Lease without Secured Party's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

7. Invalid or Inoperative Provisions. If any portion or portions of this Agreement shall be held invalid or inoperative, then all of the remaining portions shall remain in full force and effect, and, so far as is reasonable and possible, effect shall be given to the intent manifested by the portion or portions held to be invalid or inoperative. Notwithstanding the foregoing, in the event the provisions of Section 2 above are not binding upon or enforceable against Secured Party, then the provisions of Section 1 above shall not be binding upon or enforceable against Tenant.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, except to the extent applicable laws of the jurisdiction in which the Property is located apply with respect to the validity hereof, the priority of the liens and interests, and the enforcement of the remedies granted herein.

9. Notices. So long as the Mortgage remains outstanding and unsatisfied, Tenant will mail or deliver to Secured Party, at the address and in the manner herein below provided, a copy of all notices given to the Landlord by Tenant under and pursuant to the terms and provisions of the Lease. All notices or other communications required or permitted to be given

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (Mississippi)
Wells Fargo/ Fortress/ O'Charley's, Inc.
Loan No. 0264736835/ Unit No. 269

pursuant to the provisions hereof shall be in writing and shall be considered as properly given if (i) mailed to the addressee by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the addressee, or (iii) by delivery to a third party commercial delivery service for same day or next day delivery to the office of the addressee with proof of delivery. Notice so given shall be effective, as applicable, upon (i) the third (3rd) day following the day such notice is deposited with the U.S. Postal Service, (ii) delivery to the addressee, or (iii) the second (2nd) business day following the day such notice is delivered to such third party delivery service. Notice given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the addresses of the Landlord, Tenant and Secured Party are as follows:

Landlord:	FCHUX LLC c/o Drawbridge Special Opportunities Fund LP 1345 Avenue of the Americas, 46th Floor New York, New York 10105 Attn: Constantine M. Dakolias, President and Glenn P. Cummins, CFO
with copy to:	Sidley Austin LLP 555 West Fifth Street, Suite 4000 Los Angeles, California Attn: Aimee Contreras-Camua, Esq.
Tenant:	O'Charley's, Inc. 3038 Sidco Drive Nashville, Tennessee 37204 Attn: Legal
with copy to:	Bass Berry & Sims PLC 150 Third Avenue South, Suite 2280 Nashville, Tennessee 37201 Attn: D. Mark Sheets
Secured Party:	Wells Fargo Bank, National Association 1808 Aston Avenue, Suite 250 Carlsbad, California 92008 Attention: Loan Administration

Notwithstanding the foregoing, any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other parties in the manner set forth herein.

10. **Binding Nature.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors, successors-in-title and

SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT (Mississippi)
Wells Fargo/ Fortress/ O'Charley's, Inc.
Loan No. 0264736835/ Unit No. 269

assigns. When used herein, the term "Landlord" refers to Landlord and to any successor to the interest of Landlord under the Lease and "Secured Party" refers to Secured Party and to any assignee or subsequent holder of the note secured by the Mortgage (whether by assignment, secondary market transaction, or otherwise) and Secured Party's servicer of the Loan, if any.

11. Tenant's Personal Property. In no event shall the Mortgage cover or encumber (and shall not be construed as subjecting in any manner to the lien thereof) any of Tenant's Personal Property (as defined in the Lease), which may include, but shall not be limited to, trade fixtures, personal property, restaurant and business equipment, furniture, signs or other personal property at any time placed on or about the Property; provided, however, that Tenant shall, at its expense, repair any damage caused by the removal of such items, in accordance with the terms of the Lease.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties have executed as of the date acknowledged below, to be effective as of the date first above written.

LANDLORD:

FCHUX LLC,
a Delaware limited liability company

By: [Signature]
Name: Joshua A. Pack
Title: Vice President

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

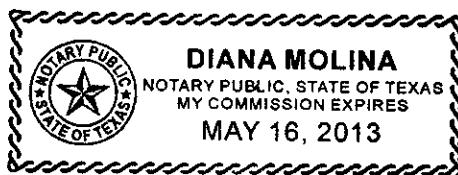
Personally appeared before me, the undersigned authority in and for the said County and State, on this 8th day of December, 2011, within my jurisdiction, the within named Joshua A. Pack, who acknowledged that he is Vice President of FCHUX LLC, a Delaware limited liability company, and that for and on behalf of said company and as its act and deed, he executed the above and foregoing instrument, after first having been duly authorized so to do.

Diana Molina
Notary Public

My Commission Expires:

5.16.2013

[Affix Notarial Seal]



SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (Mississippi)
Wells Fargo/ Fortress/ O'Charley's, Inc.
Loan No. 0264736835

TENANT:

O'CHARLEY'S, INC.,
a Tennessee corporation

By: Leslie E. Cherry
Name: Leslie E. Cherry
Title: Asst. Sec.

STATE OF Tennessee §
COUNTY OF Davidson §

Personally appeared before me, the undersigned authority in and for the said County and State, on this 15 day of December, 2011, within my jurisdiction, the within named Leslie E. Cherry, who acknowledged that he/she is Assistant Secretary of O'Charley's, Inc., a Tennessee corporation, and that for and on behalf of the said corporation, and as its act and deed, he/she executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.

Nicole Matthews
Notary Public

My Commission Expires:

[Affix Notarial Seal]



SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (Mississippi)
Wells Fargo/ Fortress/ O'Charley's, Inc.
Loan No. 0264736835

SECURED PARTY:

WELLS FARGO BANK,
NATIONAL ASSOCIATION

By: [Signature]

Name: Tyler Bovee

Title: Vice President

STATE OF CALIFORNIA

§

§

COUNTY OF SAN DIEGO

§

On December 13, 2011, before me, Linda A Paap, a Notary Public, personally appeared Tyler Bovee, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Linda A Paap

Notary Public

My Commission Expires: Dec. 19, 2012

[Notary Seal]



SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (Mississippi)
Wells Fargo/ Fortress/ O'Charley's, Inc.
Loan No. 0264736835

Exhibit A
Legal Description

Store No. 269 - Southaven

Address: 357 Goodman Rd. West, Southaven, DeSoto County, MS 38671

Real property in the City of Southaven, County of DeSoto, State of Mississippi, described as follows:

Lot 5, South Lake Commercial Subdivision located in Section 36, Township 1 South, Range 8 West, DeSoto County, Mississippi, as per plat thereof of record in Plat Book 55, Page 44, in the Chancery Court Clerk's office of DeSoto County, Mississippi.